

ARTICLE 13 DEMOLITION DELAY FOR STRUCTURES OF HISTORICAL OR ARCHITECTURAL SIGNIFICANCE

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SECTION 13.0 DECLARATION OF POLICY

Finding that the economic, cultural and aesthetic standing of the Town of Amherst can best be maintained and enhanced by due regard for the historical and architectural heritage of the Town and by striving to discourage the destruction of such cultural assets, it is hereby declared as a matter of public policy that the protection, enhancement, perpetuation and use of structures of historical and architectural significance, located within the Town of Amherst, is a public necessity, and is required in the interest of the prosperity, civic pride and general welfare of the people.

SECTION 13.1 PURPOSES

The purposes of this Bylaw are to:

- 13.10 Designate, preserve, protect, enhance and perpetuate those structures and sites within the Town that reflect outstanding elements of the Town's cultural, artistic, social, economic, political, architectural, historic or other heritage;
- 13.11 Foster civic pride in the vestiges and accomplishments of the past;
- 13.12 Stabilize or improve the aesthetic and economic vitality and values of such structures and sites;
- 13.13 Protect and enhance the Town's attraction to tourists and visitors;
- 13.14 Promote the use of historical or architectural structures and sites for the education and welfare of the people of the Town;
- 13.15 Promote good urban design including the perpetuation of related private open spaces;
- 13.16 Promote and encourage continued private ownership and utilization of such buildings and sites now so owned and used: and
- 13.17 Provide owners of significant structures with time to consider alternatives to demolition.

SECTION 13.2 DEFINITIONS

The provisions of this bylaw shall be liberally construed to effect the purposes expressed or implied in Section 13.1. Definitions of the following words and phrases shall be construed and understood according to their common and usual meaning unless the contrary is clearly indicated:

"Commission" - The Amherst Historical Commission.

"Demolition" - Any act of pulling down, destroying, removing or razing a structure or portion thereof, or commencing the work of total or substantial destruction with the intent of completing the same.

"Demolition Permit" - A permit issued by the Building Commissioner under the State Building Code for the demolition of a building or structure.

"Significant structure" - A structure or site found by the Amherst Historical Commission to contribute to the historical or architectural heritage or resources of the Town pursuant to Section 13.4 of this Bylaw.

"Structure" - Any edifice, object or building of any kind that is constructed or erected and requires more or less permanent location on the ground or attachment to an object with permanent location on the ground, not including wheels.

SECTION 13.3 PROCEDURE

- 13.30 No permit for demolition of a significant structure shall be issued except as provided in this bylaw.
- 13.31 Every application for a demolition permit shall be made upon a form provided by the Building Commissioner, and shall be signed by the owner or the owner's agent under the power of attorney. Every application shall include such locational information, plans and narrative description and justification of the proposed demolition as shall be required under Historical Commission rules and regulations for such applications. Notice to abutters and parties in interest shall be done in accordance with the procedures required for Special Permits, as found on M.G.L. Chapter 40A.
- 13.32 Upon receipt of any application for a demolition permit, the Building Commissioner shall within five (5) days transmit a copy thereof to the Amherst Historical Commission.
- 13.33 Within thirty-five (35) days of the Commission's receipt of a copy of the application for a demolition permit, the Commission shall hold a public hearing on such application, and shall make a determination as to whether the structure is a *significant structure* under one or more of the criteria set forth in Sections 13.40 and 13.41. The Commission shall give written notice of the time and place of the hearing, not less than seven (7) days prior to the hearing, to the owner by certified mail, to abutters and parties in interest by mail, and by posting and by publication once in a local newspaper. The Commission may conduct a site visit prior to the hearing.
- 13.34 If, within thirty-five (35) days of the Commission's receipt of a copy of an application for a demolition permit, no public hearing has been held, or if within fourteen (14) days following the close of the public hearing no finding by the Commission has been filed with the Building Commissioner, the Building Commissioner may, subject to the requirements of the State Building Code and any other applicable laws, bylaws, rules and regulations, issue the demolition permit.
- 13.35 If after holding a public hearing the Commission shall determine that the structure is not a *significant structure* because it fails to meet one or more of the criteria set forth in Section 13.4, or if the Commission shall determine that the structure is a *significant structure* meeting one or more of the criteria set forth in Section 13.4, but that the proposed demolition would not be detrimental to the historical or architectural heritage or resources of the Town, then the Commission shall notify the Building Commissioner in writing of its findings within fourteen (14) days of said determination. Upon receipt of such notification, or upon expiration of said fourteen (14) days without such notice, the Building Commissioner may issue a demolition permit, subject to the requirements of the State Building Code and any other applicable laws, bylaws, rules and regulations.
- 13.36 If, after such hearing, the Commission determines that the structure is a *significant structure* and that the proposed demolition would be detrimental to the historical or architectural heritage or resources of the Town, then it shall file written notice with findings, of its determination to the applicant and the Building Commissioner, and no demolition permit shall be issued until twelve (12) months after the date of such determination by the Commission.

SECTION 13.4 STANDARDS FOR DESIGNATION AS A SIGNIFICANT STRUCTURE

The Historical Commission shall determine that a structure be designated as a *significant structure* if it meets one or more of the following criteria:

- 13.40 It is listed on, or is within an area listed on, the National Register of Historic Places, or is the subject of a pending application for listing on said National Register, or;

13.41 The Commission determines that the structure meets one or more of the following three criteria:

13.410 **Historical Importance.** The structure meets the criteria of historical importance if it:

13.4100 Has character, interest or value as part of the development, heritage or cultural characteristics of the town of Amherst, the Commonwealth of Massachusetts or the nation, or;

13.4101 Is the site of an historic event, or;

13.4102 Is identified with a person or group of persons who had some influence on society, or;

13.4103 Exemplifies the cultural, political, economic, social or historic heritage of the community.

13.411 **Architectural Importance.** The structure meets the criteria of architectural importance if it:

13.4110 Portrays the environment of a group of people in an era of history characterized by a distinctive architectural style, or;

13.4111 Embodies those distinguishing characteristics of an architectural type, or;

13.4112 Is the work of an architect, master builder or craftsman whose individual work has influenced the development of the Town, or;

13.4113 Contains elements of architectural design, detail, materials or craftsmanship which represents a significant innovation.

13.412 **Geographic Importance.** The structure meets the criteria of geographic importance if:

13.4120 The site is part of, or related to, a square, park, or other distinctive area, or;

13.4121 The structure, as to its unique location or its physical characteristics, represents an established and familiar visual feature of the neighborhood, village center, or the community as a whole.

SECTION 13.5 DEMOLITION

Notwithstanding the provisions of Section 13.36, the Building Commissioner may issue a demolition permit for a *significant structure* under any of the following circumstances:

13.50 If at any time, after inspection, the Building Commissioner shall determine that the structure poses an imminent threat to the public health or safety of the community under Section 13.63, and so advises the Commission in writing, or;

13.51 The Commission is satisfied that there is no reasonable likelihood that either the owner or some other person or group is or will be willing to purchase, preserve, rehabilitate or restore such building, and so advises the Building Commissioner in writing, or;

13.52 The Commission is satisfied that the owner has made continuing bona fide and reasonable efforts to locate a purchaser who would be willing to preserve, rehabilitate and restore the subject building but that such efforts have been and will continue to be unsuccessful, and so advises the Building Commissioner in writing.

SECTION 13.6 EMERGENCY DEMOLITION

- 13.60 If a building or structure poses an immediate threat to public health or safety due to its deteriorated condition, the owner of such building or structure may request issuance of an emergency demolition permit from the Building Commissioner.
- 13.61 Upon receipt of any application for an emergency demolition permit, the Building Commissioner shall within five (5) days transmit a copy thereof to the Amherst Historical Commission.
- 13.62 As soon as is practicable, but within 14 days after receipt of such an application, the Building Commissioner shall inspect the building or structure with a team consisting of the Commissioner, Town Engineer, Fire Chief, Historical Commission Chair and two (2) other members of the Commission selected by the Chair, or the designees of said officials.
- 13.63 Within 5 days after inspection of the building or structure, and after consultation with other members of the inspection team, the Building Commissioner shall determine: 1) whether the condition of the building or structure represents a serious and imminent threat to public health and safety, and; 2) whether there is any reasonable alternative to the immediate demolition of the building or structure which would protect public health and safety.
- 13.630 If the Building Commissioner finds: 1) that the condition of the building or structure poses a serious and imminent threat to public health and safety, and; 2) that there is no reasonable alternative to the immediate demolition of the building or structure, then the Commissioner may issue an emergency demolition permit to the owner of the building or structure.
- 13.631 If the Building Commissioner finds: 1) that the condition of the building or structure does not pose a serious and imminent threat to public health and safety, and/or; 2) that there are reasonable alternatives to the immediate demolition of the building or structure which would protect public health and safety, then the Commissioner may refuse to issue an emergency demolition permit to the owner of the building or structure.
- 13.64 Upon issuing an emergency demolition permit under the provisions of this section, the Building Commissioner shall submit a brief written report to the Commission describing the condition of the building or structure and the basis for his/her decision to issue an emergency demolition permit.

Nothing in this section shall be inconsistent with the procedure for the demolition and/or securing of buildings and structures established by M.G.L. Chapter 143, Sections 6-10.

SECTION 13.7 ENFORCEMENT AND REMEDIES

The following enforcement and remedies shall apply under this bylaw:

- 13.70 The Historical Commission is authorized to adopt rules and regulations to carry out its duties and functions under this bylaw.
- 13.71 The Commission and the Building Commissioner are each authorized to institute any and all proceedings in law or equity they shall deem necessary and appropriate to obtain compliance with the requirements of this bylaw, or to prevent a violation thereof.
- 13.710 Any owner of a building and/or structure subject to this Bylaw who knowingly acts to demolish said building and/or structure, or damage a portion of a building or structure in a way which increases its likelihood of total failure, without first obtaining a building permit for demolition in accordance with the provisions of this Bylaw, or who likewise by some causative action contributes to the deterioration of said building or structure during the demolition review period, shall be in violation of this Bylaw and subject to enforcement by a

non-criminal complaint pursuant to the provisions of M.G.L. Chapter 40, Section 21D, as amended.

13.711 Notwithstanding the provisions of Section 11.45, the fine for any such violation shall be three hundred dollars (\$300.00) for each offense. Each day the violation exists shall constitute a separate offense until the demolished building is rebuilt or re-created as directed by the Historical Commission, or unless otherwise agreed to by the Commission.

13.712 Notwithstanding the above, this section does not create an affirmative obligation to maintain a property.

13.72 No building permit shall be issued with respect to any premises upon which a significant structure has been demolished in violation of this bylaw for a period of two (2) years from the date of the completion of such demolition.

SECTION 13.8 SEVERABILITY

If any section, paragraph or part of this bylaw be for any reason declared invalid or unconstitutional by any court, every other section, paragraph and part shall continue in full force and effect to the extent that the overall purposes of this article can still be met.